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5 Chapter 7 Trustee

6
7 UNITED STATES BANKRUPTCY COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9

10 In re

11 OPSYS U.S. CORPORATION,

12 Debtor.

Case No. 03-42660 LT
Chapter 7

13 MOTION FOR ORDER APPROVING
14 COMPROMISE OF CONTROVERSY
15 AND OPPORTUNITY FOR OBJECTIONS

16 John T. Kendall, Chapter 7 Trustee of the bankruptcy estate of Opsys U.S. Corporation (the
17 “Trustee”) hereby moves the court for an order approving a compromise of controversy entered into
18 between the Trustee and Sunnyside Development Company, LLC (“Sunnyside”). The grounds for the
19 motion are set forth below.

20 Sunnyside was the landlord of the Debtor for the Debtor’s former business premises located at
21 47375 Fremont Boulevard, Fremont, California (the “Premises”).

22 The Trustee and Sunnyside previously entered into a settlement agreement which was approved
23 by this court on January 26, 2004 (the “Settlement Agreement”) to settle certain disputes between
24 Sunnyside and the Trustee regarding Hazardous Materials located on the Premises, the clean up of
25 Hazardous Materials on the Premises and Sunnyside’s asserted right to an administrative claim in the
26 bankruptcy case.
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Motion for Order Approving Compromise of Controversy and
Opportunity for Objections

1 Pursuant to the terms of the Settlement Agreement, the parties agreed that if either party obtained
2 reimbursement for payments made for the removal and/or remediation of Hazardous Materials from the
3 Premises, the parties would share in the proceeds of such reimbursement pro rata, based upon the
4 amount that each party actually paid towards the removal and/or remediation of Hazardous Materials
5 from the Premises. Further, pursuant to the terms of the Settlement Agreement, Sunnyside retained the
6 right to file a general unsecured claim in the bankruptcy case.

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8 Sunnyside filed a general unsecured proof of claim in the bankruptcy case in the amount of
9 \$1,906,657.10.

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11 Pursuant to the terms of the Settlement Agreement, the Trustee estimates that Sunnyside is
12 entitled to a payment of \$2,619.50 from the bankruptcy estate.

13
14 Sunnyside is currently prosecuting a claim against its insurance company relating to the cost of
15 removing the Hazardous Materials from the Premises. Pursuant to the Settlement Agreement, if
16 Sunnyside is successful in obtaining a recovery from the insurance company, the bankruptcy estate
17 would be entitled to a reimbursement claim against Sunnyside. However, the estate's right to possible
18 reimbursement from Sunnyside under the Settlement Agreement is highly contingent, uncertain and is
19 preventing the Trustee from closing the Opsys bankruptcy case and disbursing the remaining assets to
20 the creditors.

21
22 The Trustee and Sunnyside have entered into an amendment to the Settlement Agreement
23 ("Amendment") whereby Sunnyside has agree to withdraw and release its unsecured proof of claim
24 against the estate and has agreed to waive its right to any reimbursement from the estate pursuant to the
25 Settlement Agreement, including the \$2,619.50 which is owing to it under the Settlement Agreement.
26 In exchange, the Trustee has agreed that the estate will waive any right to reimbursement from
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1 Sunnyside arising out of any recovery that Sunnyside might receive on account of the action that it has
2 filed against the insurance company.

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4 The Trustee believes the settlement with Sunnyside, as set forth in the Amendment, is a fair and
5 reasonable settlement and is in the best interest of the estate and its creditors. In deciding to settle, the
6 Trustee has considered the relevant factors as set forth in the case In re A&C Properties, Inc., 784 F.2d
7 1377, 1381 (9th Cir. 1986) including, but not limited to, the amount in controversy, the strengths and
8 weaknesses of the claims and defenses, the delay, cost and uncertainty of litigation and the best interest
9 of creditors.

10
11 **WHEREFORE**, the Trustee respectfully requests that the court enter an order approving the
12 compromise between the Trustee and Sunnyside and authorizing the Trustee to execute any and all
13 documents necessary to effectuate the settlement, including the Amendment.

14
15 Dated: February 12, 2007

KORNFIELD, PAUL & NYBERG, P.C.

17 By: Eric A. Nyberg /s/
18 (Bar No. 131105)
19 Attorneys for John T. Kendall, Chapter 7 Trustee
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DECLARATION OF SERVICE

I, the undersigned, declare:

I am employed in the City of Oakland, County of Alameda, California. I am over the age of 18 years and not a party to this action. My business address is 1999 Harrison Street, Suite 2675, Oakland, California 94612.

I am readily familiar with the business practices of my employer, Kornfield, Paul & Nyberg, P.C., for the collection and processing of correspondence for mailing with the United States Postal Service and that correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On February 12, 2007, I served the following document(s):

MOTION FOR ORDER APPROVING COMPROMISE OF CONTROVERSY AND OPPORTUNITY FOR OBJECTIONS;

DECLARATION OF JOHN T. KENDALL IN SUPPORT OF MOTION FOR ORDER APPROVING COMPROMISE OF CONTROVERSY AND OPPORTUNITY FOR OBJECTIONS

by placing copies of said document(s) in sealed envelope(s) and served in the manner or manners described below addressed as follows:

U. S. Trustee
1301 Clay Street, Suite 690N
Oakland, CA 94612-5202

Renee Watkins
Law Offices of Murray and Murray
19330 Stevens Creek Blvd. #100
Cupertino, CA 95014-2526

Stephen T. O'Neill
Law Offices of Murray and Murray
19400 Stevens Creek Bl. #200
Cupertino, CA 95014-2548

Alyson L. Huber, Esq.
Bartko, Zankel, Tarrant & Miller
900 Front Street, Suite 300
San Francisco, CA 94111

I placed such envelope(s) for collection and mailing at my employer's office following ordinary business practices, addressed to the addressee(s) designated.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of February, 2007 at Oakland, California.

Gail M. Aviles /s/